

AG Contract No.: KR04-1638TRN
ADOT ECS File No.: JPA 04-070
Project No.: TEA-B40-C- (002) A
Section: Ash Fork
Project: 40B, 3rd-8th Street
TRACS No.: H6213 01C
Budget Source Item No.: 75306

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE COUNTY OF YAVAPAI

THIS AGREEMENT is entered into 6 January, 2005, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the COUNTY OF YAVAPAI, acting by and through its BOARD OF SUPERVISORS (the "County").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The County is empowered by Arizona Revised Statutes § 11-251 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the County.

3. Congress has authorized appropriations for, but not limited to, twelve eligible categories of transportation enhancement activities.

4. The County has selected such project within the boundary of the County; the survey of the project has been completed and as required, submitted to the State and the Federal Highway Administration (FHWA) for its approval.

5. The State and the County desire to participate in the design, construction, and maintenance of 5' sidewalks located on both sides of B-40 from 3rd Street to 8th Street, and landscaping and sidewalks around the ADOT Ash Fork Historical Maintenance Building, hereinafter referred to as the "Project", at an estimated cost of \$229,713.00. The parties agree that the State will design and construct and upon completion the County will maintain the landscaping portion of the Project and ADOT Seligman Maintenance will maintain the sidewalk portion of the Project.

NO. 27290
Filed with the Secretary of State
Date Filed: 01/06/05

Janice K. Brewer
Secretary of State

By: Dicky V. Groenewold

Construction Tracs No. H6213 01C

Estimated Construction Cost	\$202,413.00
Estimated Federal Aid Funds @ 94.3%	\$189,053.74
Estimated State Funds @ 5.7%	\$ 13,359.26

Design TRACS No.: H6213 01D

Estimated Design Costs	\$32,587.00
Estimated Federal-aid Funds @ 94.3%	\$30,729.54
Estimated State Funds @ 5.7%	\$ 1,857.46

Total Estimated Design & Construction Costs: \$235,000.00

*Includes 15% for Construction Engineering Administration and 5% for Change Orders

THEREFORE, inconsideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK**1. The State will:**

a. Submit a program to the Federal Highway Administration (FHWA) containing the above-mentioned Project with the recommendation that it be approved for construction.

b. Construct the Project approved by FHWA, if such funds are available for construction. Be the designated authorized agent with the consent of the County and the FHWA and proceed to advertise for, and open bids with the aid and consent of the County and the FHWA. Enter into a contract(s) with a firm(s) to whom the award is made with the concurrence of the FHWA. Enter into a Project Agreement with FHWA on behalf of the County to perform, complete, accept and pay for in accordance with instructions and requirements of the County and the Arizona Department of Transportation. Request the maximum federal funds available including construction, engineering and administration costs.

c. Prepare plans, specifications and an estimate for the Project and will submit them to the County for concurrence. After the County concurs with the plans, the Project will be constructed by the State using State and Federal Funds.

d. Be obligated to maintain (ADOT Kingman District, Seligman Maintenance) the sidewalk portion of this Project.

e. Not be obligated to maintain the landscaping portion of the Project.

2. The County will:

a. Not permit or allow any encroachments, except those authorized by permit, upon or private use of the County right-of-way. In the event of any unauthorized encroachment or improper use, the County shall take all necessary steps to remove or prevent any such encroachment or use.

b. Remove from the proposed County right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the project area and hereby certifies that all obstructions and encroachments have been or will be removed prior to the start of Project construction.

c. Upon completion and acceptance of the Project, provide for, at its own cost and as an annual item in its budget, perpetual and proper maintenance of the ADOT Ash Fork Historic Maintenance Building landscaping. Maintenance shall consist of the care and good repair of all project features listed above and the landscaping shall be in accordance with accepted horticultural practices, keeping all areas in good repair, free of weeds and undesirable grasses and litter, applying irrigation water, furnishing and applying insecticide/herbicide sprays and dust to combat diseases and other pests, pruning and

replanting as required to maintain the landscaping as it was designed and established at the completion of the Project

d. Not be obligated to maintain the sidewalk portion of the Project.

e. Conduct all maintenance work in a manner to minimize traffic congestion and interference with through traffic. All traffic controls will meet the requirements of the most recent Arizona Department of Transportation's "Uniform Traffic Control Manual".

III. MISCELLANEOUS PROVISIONS

1. Each party (as "indemnitor") agrees to indemnify, defend and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees), hereinafter collectively referred to as "claims", arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents employees or volunteers.

2. The terms, conditions and provisions of this Agreement shall remain in force and effect until completion and reimbursements provided herein. However, any provisions for maintenance of sidewalks and landscaping, provided by the County shall be perpetual. This Agreement may be cancelled at any time prior to the award of the Project construction contract, upon thirty-days (30) written notice to either party. It is understood and agreed that, in the event the County terminates this Agreement, the State shall in no way be obligated to maintain said Project.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this contract.

6. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

7. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007
(602)-712-7525

County of Yavapai
Public Works Director
1100 Commerce Drive
Prescott, AZ 86301
(928) 771-3183

8. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

9. Non-Availability of Funds: Every payment obligation of the State and County under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State and County at the end of the period for which the funds are available. No liability shall accrue to the State and County in the event this provision is exercised as a result of termination under this paragraph.

10. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

COUNTY OF YAVAPAI

STATE OF ARIZONA

Department of Transportation

By _____

CHIP DAVIS
Chairman of the Board

By _____

SUSAN TELLEZ
Contract Administrator

ATTEST

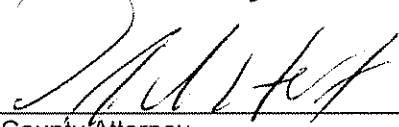
By _____

BEV STADDON
Clerk of the Board

APPROVAL OF THE COUNTY OF YAVAPAI

I have reviewed the above referenced proposed Intergovernmental Agreement, between the DEPARTMENT OF TRANSPORTATION, TRANSPORTATION PLANNING DIVISION, and THE COUNTY OF YAVAPAI and declare this Agreement to be in proper form and within the powers and authority granted to the County under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 10th day of December, 2004.



County Attorney

**CERTIFIED COPY OF ENTRY IN OFFICIAL MINUTES
OF THE YAVAPAI COUNTY BOARD OF SUPERVISORS**

YAVAPAI COUNTY)
) ss.
ARIZONA)

Bev Staddon, having been first duly sworn, deposes and says:

I am the duly appointed, qualified and acting Clerk of the Yavapai County Board of Supervisors and in such capacity under the provisions of ARS §11-241 am charged with the responsibilities, among others, of recording all proceedings of the Board and maintaining custody of such records of the Board as are required by law to be maintained. Among the records of which I have custody is the official minute book of the Board of Supervisors which under the provisions of ARS §11-217 is required to be made and kept.

Set forth below is a copy of an entry in the aforesaid minute book of which, as aforesaid, I am the officer having the legal custody. This is my certificate under the provisions of Rule 44(A), Rules of Civil Procedure, and the Uniform Business Records Act, that the said copy is a true and correct copy thereof, to which I attest by my signature subscribed hereunto:

Date of meeting of which the minutes are a record: December 6, 2004.

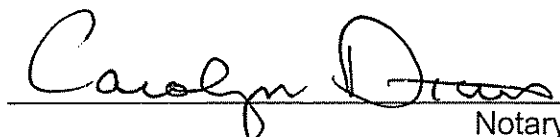
The entry in the said minutes:

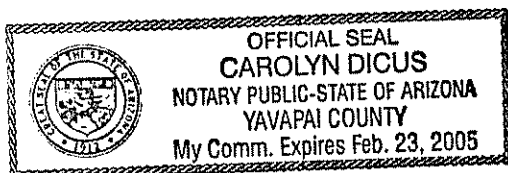
Consider approval of intergovernmental agreement JPA 04-070 with the State of Arizona for design and construction of sidewalks along Business 40 from 3rd Street to 8th Street and landscaping and sidewalks around the Ash Fork Historical Maintenance Building, Ash Fork area. No County funds involved. Approved by unanimous vote after Mr. Straub said that ADOT would be responsible for maintenance of the sidewalks. Motion by Supervisor Brownlow, second by Supervisor Street. No comments from the public.

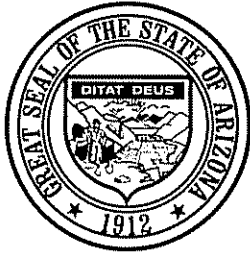

Bev Staddon, Clerk

SUBSCRIBED AND SWORN to before me December 20, 2004.

My Commission Expires:


Notary Public





**ATTORNEY GENERAL
CIVIL DIVISION
TRANSPORTATION SECTION**

MEMORANDUM

Jeffrey T. Murray
Assistant Attorney General

Direct: (602) 542-8859
Fax: (602) 542-3646

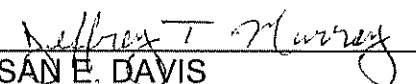
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-1638TRN (**JPA 04-070**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED December 29th, 2004.

TERRY GODDARD
Attorney General



SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:dgr
Attachment
883358